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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Minimum Humanitarian Standards

Analytical Report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1997/21

Views and information received from States and United Nations bodies

Addendum

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INTRODUCTION

1. By its resolution 1997/21 of 11 April 1997, entitled "Minimum Humanitarian Standards", the Commission on Human Rights requested the Secretary-General, in preparing his analytical report on the issue of fundamental standards of humanity, to seek the views of and information from Governments, United Nations bodies, in particular the Office of the United Nations High Commissioner for Refugees, the human rights treaty bodies and intergovernmental organizations, as well as regional and non-governmental organizations.

2. Views and information were received from the following States: Botswana, Canada, Colombia, Croatia, Cuba, Ecuador, Finland, Jordan, Norway, Philippines, Switzerland and Turkey. In addition, comments were received from the Food and Agriculture Organization and the United Nations High Commissioner for Refugees. All of the contributions received as of 15 December 1997 are set out in the present report.

3. It should be pointed out that in addition to providing views on the issue of fundamental standards of humanity, some of the comments received also provide information regarding national legislation during periods of emergency. Also, pursuant to a request made by the Commission in 1995, some responses also comment on the text of the Declaration of Minimum Humanitarian Standards adopted at an expert meeting in Turko/Åbo (Finland) in December 1990, and which was circulated in document E/CN.4/Sub.2/1991/55, and later in document E/CN.4/1996/80.

VIEWS AND INFORMATION RECEIVED FROM STATES

A. Botswana

[Original: English]
[25 February 1997]

4. I am happy to inform you that the Declarations relating to public emergencies are governed by the provisions of the Constitution of the Republic of Botswana under section 17 which gives the President the power, by Proclamation published in the Gazette, to declare that a state of public emergency exists. The Constitution provides that citizens' human rights and legislation relevant to situations of public emergency meet the requirement of the rule of law, and it does not involve discrimination on the grounds of race, colour, sex, language, religion or social origin. Moreover, the Constitution in other provisions, gives protection from discrimination on grounds of race, colour, sex, language, religion or social origin.

[...]

B. Canada

[Original: English]
[28 October 1997]

General comments

5. The Government of Canada supports the creation of a Declaration of Minimum Humanitarian Standards and would like to provide some comments on the draft instrument.

6. Canada supports the development of an instrument which sets out the minimum humanitarian standards which are to be applied at all times and respected by States and non-State actors alike. However, it is Canada's view that the Declaration as a whole would benefit from further review and discussion, in particular, clarification as to the circumstances in which the Declaration is to apply and the effect that this document would have on existing instruments of international law, including the provisions of existing human rights and humanitarian law conventions. If there are inconsistencies between the Declaration and other instruments, we must address the relationship between this Declaration, a non-legally binding instrument, with those instruments of international human rights and humanitarian law, which are legally binding on States parties.

7. As these two areas of international law developed independently of one another and are considered to be specialized areas of international law, it may not be possible to combine accepted concepts or principles from these areas of law without considering the context in which they were developed.

8. In the context of particular provisions, we must consider whether the situation or problem which we are trying to address in drafting such a

Declaration results from the deficiency or lacuna in existing international law or is rather a result of non-compliance by States parties of the provisions of legally-binding instruments.

9. There is some inconsistency regarding the level of detail contained in the provisions - some are broad and vague while others are highly specific, drawing extensively from existing instruments of international law.

10. Canada wishes to provide some preliminary comments on the provisions of the Declaration as well as some information on Canada's emergency regime.

Comments on the provisions of the Declaration

Article 1

11. Canada supports the goal of setting out humanitarian standards which are to apply at all times. Nevertheless, current human rights instruments do provide for derogation in specific circumstances. For example, the International Covenant on Civil and Political Rights (ICCPR) allows for derogation of the rights contained in the instrument, with specified exceptions, in times of public emergency, in accordance with the procedures set out in the instrument. Article 1 of this Declaration, however, provides that all rights contained in the Declaration are non-derogable. In certain cases, there may be a conflict between the standards set out in the Declaration and the derogation provisions of the ICCPR, a widely-ratified legally-binding instrument. We are unclear as to whether paragraph 1 of article 18, which states that the present standards shall not be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument, was intended to address this situation.

12. In cases of apparent conflict between the provisions of this Declaration and the ICCPR with respect to the derogation of the articulated rights, we may wish to consider whether it might be more useful to consider enunciating or defining the circumstances under which the derogation is possible, rather than trying to amend by way of a Declaration the provisions of an existing legally-binding instrument.

Article 2

13. It is unclear what is meant by the reference to "groups and authorities" in article 2. Is the reference to "authorities" meant to include the State itself?

14. Rather than referring to "adverse discrimination", we would suggest that the article draw on the wording from article 2 of the ICCPR which states that the rights are to apply to all individuals "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 3

15. Canada supports the principles included in this article, as they are drawn from the principles enunciated in articles 16 and 18 of the ICCPR and

article 4 of Additional Protocol II, as well as other principles of international law. Nevertheless, it is not immediately apparent why these principles have been combined in one article, particularly since the provisions in Additional Protocol II were designed to apply in non-international armed conflict. Although many of the concepts are similar as those contained in human rights law, such as the right to life and the prohibition against torture, the principles were developed, and have come to be understood and interpreted, in another context. In the complex subject area of international law, we must be aware of the difficulty of applying concepts of one area of international law directly to another area of international law, without considering first the feasibility and ramifications of doing so.

Article 4

16. Canada supports the principles contained in this article and is of the view that a State should make all reasonable efforts to communicate information about detained persons to family members and other persons having a legitimate interest in the information.

Article 5

17. This article illustrates the difficulties in attempting to impose the concepts of international humanitarian law on situations for which international humanitarian law was not meant to apply.

18. Although we recognize that the term "acts of violence", such as is used in article 5 and other articles of this Declaration, has also been used in Additional Protocol II, nevertheless, we consider that the term may be too vague in this context. There is no definition which would enable States or other entities to distinguish between "acts of violence" and ordinary crimes, the latter of which would be under the jurisdiction of domestic criminal law and not covered by this Declaration. The vague natures of such a term makes the scope of this article difficult to determine.

19. The references to "use of force" and "objective to be achieved" are also unclear. The regulation of the use of force by combatants in an international or non-international armed conflict is an accepted part of international humanitarian law, resulting from a multitude of international agreements and customary law. Should these principles automatically apply to situations other than armed conflict, such as terrorism, or isolated acts of violence, which may be prohibited by national or international law? Would the application of these principles add a degree of legitimacy to such acts?

20. Canada agrees that the weapons or other material or methods prohibited in international armed conflicts must not be employed in other armed conflicts or hostilities not of an international character. Consideration should be given to broadening the reference to include those other weapons which have been prohibited, such as chemical weapons, biological or toxin weapons, or other weapons prohibited by disarmament or international humanitarian law treaties to which the State is a party, or which are accepted as part of customary law.

Article 6

21. Canada supports the principle contained in this article, which is drawn from article 51 of Additional Protocol I.

Article 7

22. Canada is of the view that while reasonable efforts should be made to ensure that displaced persons who wish to remain together are able to do so, there may be circumstances where for reasons of health or other public interests this is not possible. Similarly, persons should not be compelled to leave their territory, except in accordance with the law and for the purposes of safety or security. We are concerned, however, that the reference to "imperative security reasons" is vague and could provide justification for almost any situation which arises.

Article 8

23. Canada supports the principles contained in this article, which are drawn from article 6 of the ICCPR. In article 8 (2) it is not clear whether "the following provisions" refer to the following paragraph 3 and 4 or to something else.

Article 9

24. Canada supports the principles included in this article, which are drawn from various provisions of the ICCPR. Nevertheless, we note that there is an apparent inconsistency between this article, which states that such rights are "indispensable" and article 1 of the Declaration which states that no derogation from the provision of the Declaration is possible, and the ICCPR itself, which allows for derogation of these rights in specified circumstances. Indeed, it should be noted that with respect to article 9 (d) the Statutes of the International Tribunals for the Former Yugoslavia and Rwanda provides for trials in the absence of the accused in limited circumstances.

Article 10

25. Canada supports including an article regarding the rights of children to adequate protection and support, in particular during armed conflict.

Article 11

26. Canada supports the principle contained in this article, but has similar concerns regarding the fact that it would allow for derogation for reasons based on "imperative reasons of security". This may, in fact, go beyond the derogation provisions of the ICCPR which allows for derogation "in time of public emergency which threatens the life of the nation".

Article 12

27. Canada supports the principles contained in this article, which are drawn from similar provisions in the 1949 Geneva Conventions and their

Additional Protocols. To maintain consistency, the reference to discrimination should be similar to that referred to in connection with article 2.

Article 13

28. Canada supports the principles contained in this article, which are drawn from similar provisions in the 1949 Geneva Conventions and their Additional Protocols. The article may benefit from some re-drafting as the phrasing is awkward.

Article 14

29. Canada supports the principles contained in this article, which are drawn from similar provisions in the 1949 Geneva Conventions and their Additional Protocols.

Article 15

30. Canada is of the view that article 15 should indicate that all reasonable efforts should be taken to ensure that humanitarian organizations are granted, to the fullest extent practicable, the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

31. Canada supports the principle contained in this article. We wonder, however, whether a mention of "all efforts" might result in a lower standard of protection for groups, minorities and peoples, especially given that during times of armed conflict or other situations of violence, such groups, minorities and peoples might be more vulnerable than the rest of the population.

Article 17

32. Canada supports the principle contained in this article, which complements the obligations placed upon authorities, groups or persons referred to in article 2.

Article 18

33. As mentioned previously, we must consider the relationship between this Declaration and other instruments of international law, in particular the effect of paragraph 2 of this article. In paragraph 1 we might consider whether we also want to cover customary law.

Canada's emergency regime

34. Canada's emergency regime derives from a number of sources, including Crown prerogative, the Canadian Constitution, the common law, and legislation directly applicable to emergencies. Until 1988, the federal statutory regime consisted of the War Measures Act, the National Defence Act, the Criminal Code of Canada, and such ad hoc legislation as might be necessary to meet a

national emergency. The most significant of these, the War Measures Act, was founded on Parliament's exercise of its powers under section 91 of the Constitution Act, 1867 to legislate for the "Peace, Order and good Government of Canada" with respect to "all Matters not coming within the Classes of Subjects ... assigned exclusively to the Legislatures of the Provinces".

35. Controversies surrounding the use of the War Measures Act were the impetus to enact federal legislation to replace the War Measures Act. The new federal legislation, which came into force in 1988, comprises two Acts, the Emergencies Act (attached as annex 1) and the Emergency Preparedness Act.

36. The Emergency Preparedness Act establishes emergency preparedness as a function of the Federal Government and prescribes the responsibilities of the different federal departments for emergency preparedness.

37. The Emergencies Act defines and proscribes the powers of the Federal Government when addressing national emergencies. The Act defines a "national emergency" and further defines four types of national emergencies:

- public welfare emergencies (severe natural disasters or major accidents affecting public welfare);

- public order emergencies (emergencies constituting a threat to the security of Canada);

- international emergencies (emergencies which arise from acts of intimidation or coercion or use of serious force or violence that threatens the sovereignty, security or territorial integrity of Canada or its allies); and

- war emergencies (war or other armed conflict, real or imminent involving Canada or its allies).

38. For each type of national emergency, the Federal Government is provided with a range of powers it might employ to address that emergency, if all existing means fail to adequately meet the situation. The Act not only specifically grants the Federal Government authority to deal with each type of emergency but also proscribes or limits the emergency powers available to it.

39. Government action under the Emergencies Act "is subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights and must have regard to the International Covenant on Civil and Political Rights, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency". In addition, section 4 of the Act specifically prohibits the detention, imprisonment or internment of Canadian citizens or permanent residents on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability during a national emergency.

40. The Act also requires the Federal Government to consult with provinces and with the Federal Parliament prior to the exercise of emergency powers. Geographic and time limitations further limit federal emergency powers under the Act. The Government of Canada has not used the Emergencies Act to date.

C. Colombia

[Original: Spanish]
[28 February 1997]

41. Colombia recognizes the importance of having principles applicable to situations of internal violence and disturbance in a manner consistent with international law. In this connection, there follows a summary of the Government's main actions in the sphere of international humanitarian law since 7 August 1994.

International humanitarian law: dissemination, training and research

42. The Government has conducted a number of wide-ranging extension programmes aimed principally at the military, the national police force and the Administrative Department for Security. These programmes have been promoted by the Office of the Presidential Adviser for Human Rights and the Ministry of National Defence and assisted by the Office of the Ombudsman, the Office of the High Commissioner for Peace, the Colombian Red Cross and the International Committee of the Red Cross.

43. In 1994, an advisory office on human rights and political affairs was set up within the Ministry of National Defence. It has done a great deal to promote, protect, defend and publicize human rights and international humanitarian law among members of the military and police, the associated civilian staff and officials of the military justice system.

44. June 1996 saw the beginning of a special programme for the dissemination of international humanitarian law within the Army, the Navy, the Air Force and the National Police. It is based on a plan of action agreed between the Ministry of National Defence, the ICRC delegation to Colombia and the Colombian Red Cross.

45. The Office of the Presidential Commissioner for Peace is developing in cooperation with the Colombian Red Cross a programme for widespread dissemination of international humanitarian law in some 100 municipalities affected by the conflict.

46. Regarding research, an academic study on the measures that the national Government should take to apply international humanitarian law has now been completed. It was carried out by the University of Bogota's Faculty of International Relations, Jorge Tadao Lozano, and the Colombian Red Cross.

Humanization of the conflict and entry into force of Protocol II

47. Concerning the humanization of the conflict and the entry into force for Colombia of Protocol II to the Geneva Conventions of 1949, it must be emphasized that for Colombia humanitarian policy is a priority matter. The Government of Colombia considers that the provisions of Protocol II of 1977 are applicable in the national territory and that is also the understanding of the members of the military and police, the basis for this being the statements by the President of the Republic in approving Act 171 of 1994 whereby the Colombian Congress endorsed that international instrument.

Consequently, it is the political will of the Colombian Government that the provisions of Protocol II should be applied, whether or not the conditions for application laid down in article 1 of the Protocol are actually obtained.

48. Act 282 of 6 June 1996, which, inter alia, establishes measures for the eradication of certain offences against freedom of the person, especially kidnapping and extortion, makes the Director of the Presidential Programme for the Defence of Freedom of the Person responsible for ensuring proper respect for international humanitarian law.

49. By Decree 1863 of 11 October 1996 the Government created the Governmental Commission for the Humanization of the Armed Conflict and the Application of International Humanitarian Law. That body will begin meeting in March of this year. In addition, a chapter on "offences against international humanitarian law" has been included in the bill for the reform of the military penal code, and a bill for the qualification of such offences in ordinary penal law is in preparation.

Agreement with the International Committee of the Red Cross

50. On 16 February 1996, the Government of Colombia and the ICRC signed an agreement guaranteeing and facilitating humanitarian work by the latter organization throughout Colombia.

International Fact-finding Commission

51. On 17 April 1996, a delegation from the Ministry of Foreign Affairs deposited with the Swiss Federal Council a declaration recognizing the competence of the International Fact-finding Commission established in article 90 of Protocol I to the 1949 Geneva Conventions, which provides for international investigation of breaches of international humanitarian law if the Government so requests.

[...]

D. Croatia

[Original: English]
[17 September 1997]

52. The Republic of Croatia supports the preparatory work undertaken in respect of the elaboration of an international instrument devoted to the protection of the minimum core of inalienable rights enjoyed by individuals in all circumstances, often referred to as the "minimum humanitarian standards". Possible elaboration of such instrument being either of the so-called "soft law" or "hard law" character will undoubtedly benefit the full protection of the core of human rights of the individual, particularly in respect of the opportunity to fill certain lacunae existing in the field of application of international human rights and humanitarian law standards in cases of internal disturbances and riots.

53. In view of the above, the Republic of Croatia should like to make some comments as to the issues discussed at the Workshop on Minimum Humanitarian

Standards held in Cape Town (South Africa) from 27 to 29 September 1996 as mentioned in the Report of the International Workshop (E/CN.4/1997/77/Add.1).

54. In respect of the issue of lacunae or deficiencies in the legal regimes of international protection as pointed out in the Report the Republic of Croatia is of the opinion that in possible elaboration of an international standard-setting instrument on the issue of minimum humanitarian standards special attention should be paid to the lacunae existing in respect of the standards of international humanitarian law applicable to situations outside the scope of application of Additional Protocol II to the Geneva Conventions of 1977 and common article 3 of the Geneva Conventions of 1949.

55. While the protection of certain core of human rights in the situations of internal strife, disturbances or riots remains to be guaranteed by the provisions of the International Covenant on Civil and Political Rights of 1966 stipulating certain rights to be non-derogable, thus providing for a relatively proper response to the above-mentioned situations, the inapplicability of the provisions of Additional Protocol II and article 3 common to the Geneva Conventions calls for the elaboration of humanitarian law standards which will be applicable to the situations in question.

56. However, even if the standards set by the said provisions of the Geneva Conventions and the Additional Protocol II were applicable to the situations of internal strife, disturbances and riots by virtue of the instrument intended to be elaborated, certain lacunae still existed notably in respect of the adequate guarantees of protection of the civilian population and the protection of persons hors de combat. This protection seems to be of particular importance in today's world, while it is evident that the clear and proper classification of the character of the conflicts within the State territory is becoming ever more difficult in practice.

57. In respect of the question of the application of the Martens Clause to the situations in question, the Republic of Croatia is of the opinion that the value of the Martens Clause in respect of its application to the situations of internal strife, disturbances or riots should not be doubted. However, while the Martens Clause provides for the general framework of protection, for the purposes of the elaboration of the instrument on minimum humanitarian standards it shall be necessary to provide for a set of more detailed and precise standards aiming at their proper implementation in the field. This becomes particularly true in the fields of legal protection of persons hors de combat and the protection of civilian population as mentioned above.

E. Cuba

[Original: Spanish]
[1 October 1997]

58. The Government of the Republic of Cuba considers that international public, humanitarian and human rights law and the laws of war include a group of precepts which, because they are customary as well as conventional in nature, all States have a moral and political obligation to respect and which provide a basis for the protection of human rights in all situations. Cuba was honoured to participate in the International Workshop on Minimum

Humanitarian Standards held at Cape Town (South Africa) in September 1996. It should be noted that, inasmuch as this was a meeting of experts from some 30 countries and a small group of non-governmental organizations, the content of its deliberations is of a purely declaratory nature.

59. The Cuban Government considers that the primary purpose of the international community's efforts to define standards applicable in all circumstances is to achieve the broadest possible consensus on a document which must also, if it is to achieve genuine universal application, be endorsed by intergovernmental decision.

60. It would, therefore, be necessary to begin by defining the concepts of internal violence, disturbance, tension and public emergency, which are not clearly defined from the legal point of view and on which the consensus needed for an appropriate standard has not yet been reached.

61. The process of establishing minimum humanitarian standards must begin with the recognition that some human rights may be subject to legitimate restrictions on an exceptional basis during various types of emergency which pose a serious threat to public order or threaten the independence, sovereignty, territorial integrity or security of the State.

62. Declarations of exceptional situations or states of emergency must be regulated by law and satisfy a series of conditions, including an official public announcement and a statement of the reasons prompting them, strict necessity, proportionality to the situation, temporariness and an indication of the geographical area covered. Act No. 75, the National Defence Act, which was debated in and adopted by the National People's Assembly (the Cuban Parliament) in December 1994, is consistent with these principles.

63. Cuba shares the sentiments which prompted the effort to establish minimum humanitarian standards. Without prejudice to the value of such standards in alleviating and reducing human suffering, however, it believes that the international community should endeavour more effectively to avoid such internal conflicts.

64. There is a need for strict compliance with the principles of international law, including those of non-interference in internal affairs, sovereign equality, State independence and sovereignty and the right of peoples to self-determination. Of equal importance is consistent application of the provisions of the Vienna Declaration made at the 1993 World Conference on Human Rights and, in particular, the statement that all human rights, including the right to development, are universal, indivisible and interdependent.

65. Cuba considers that the unjust and unequal international political and economic order, underdevelopment, unequal income distribution between and within countries and, at times, the actions of other States and the use of coercive measures, are also responsible for the outbreak and continuation of internal conflicts and the suffering that they entail.

66. In accordance with the humanitarian principles which have guided the Cuban Revolution since its initial revolt against the tyranny of Batista in

the 1950s, the Cuban Government believes that, under all circumstances, such principles should prevail, particularly those related to respect for individuals' physical and moral integrity, prisoners' right to life, and the rights to medical care and to food.

67. Cuban law stipulates that, during exceptional situations, the National Defence Council may regulate the exercise of the following rights and freedoms in different ways appropriate to the circumstances and regions in which those situations obtain: the right to work, freedom of speech and of the press, freedom of assembly, the right to demonstrate, freedom of association, inviolability of the home and correspondence, and detention regimes.

68. Cuba hopes that the international community will be able to devote its efforts not only to alleviating human rights violations during internal conflicts, but also to avoiding them by eliminating their causes.

F. Ecuador

[Original: Spanish]
[8 September 1997]

[The Government of Ecuador submitted a reply prepared by the Ecuadorian Red Cross]

69. Modern-day treaty law has a number of gaps. Between peace and war, there is a grey area that is not covered either by human rights standards or by international humanitarian law. There is thus no legislation governing internal disturbances and tensions, during which most of the atrocities of recent times have been committed.

70. Of the 30 international conflicts recorded in 1995, 25 were internal and we consider that this trend will continue in future, especially with unstructured conflicts, which occur before an internal conflict breaks out and before internal tensions become apparent.

71. It is important that the international community should have organized this seminar through the United Nations to analyse minimum humanitarian standards, which will help to fill a large gap. It is pointed out that Protocol II and article 3 common to the Geneva Conventions might serve as a basis for building a set of flexible and general rules.

72. We agree with Mr. Yves Sandoz, ICRC Director of Policy, who states that:

> "International humanitarian law does not provide adequate protection for the victims of internal violence; the aim of the seminar is to go beyond the endless debate on the applicability of international humanitarian law and human rights law and by identifying some rules that are applicable in all situations.
>
> "Three major challenges have to be met if minimum humanitarian standards are to be established:

- Minimum humanitarian standards must be a truly unifying and, consequently, widely accepted force;

- They cannot be hostage to political negotiation, which would deprive them of their substance;

- States must not use them as a substitute for the more detailed treaty obligations they are bound to respect.

"These three challenges are difficult to meet and might even be contradictory. Consequently, a gradual and sector-by-sector approach has to be adopted by conducting in-depth studies of problems and issues and discussing them with all those involved in such situations. This would make it possible to build something solid and allay the fears of some Governments."

73. I agree with the conclusions of the seminar and, in particular, that an analytical study should be undertaken of the issues discussed at the seminar and it should be carried out by the United Nations and ICRC; the analytical study should be guided by the urgent need to protect those who are exposed to extreme suffering resulting from a lack of sufficient protection; international organizations, non-governmental organizations and civil society should promote the debate on the need for and use of minimum humanitarian standards. The States parties to Additional Protocol I should make use of the procedure provided for in article 90 to refer questions of compliance with international humanitarian law; all States Members of the United Nations must support the establishment of an international criminal court; warring parties should be encouraged to agree on at least a minimum of decent behaviour.

G. Finland

[Original: English]
[23 September 1997]

74. As the Government of Finland already stated in its note No. 2337 dated 20 December 1995, in answer to the enquiry of the Secretary-General, Finland supports the adoption of a declaration on minimum humanitarian standards on the basis of further elaboration of the (Turku) Declaration on Minimum Humanitarian Standards (E/CN.4/Sub.2/1991/55), which lists as humanitarian minimum standards the irreducible core of human rights and humanitarian norms applicable to everybody in every situation.

75. Finland also welcomes the Commission on Human Rights resolution 1997/21 of 11 April 1997, whereby the Commission requests the Secretary-General in coordination with the International Red Cross to submit to the Commission at its fifty-fourth session an analytical report on the fundamental standards of humanity, taking into consideration in particular the issues raised in the report of the International Workshop on Minimum Humanitarian Standards held in Cape Town, South Africa from 27 to 29 September 1996, and identifying, inter alia, common rules of human rights law and international humanitarian law that are applicable in all circumstances. Such a study should be guided by the urgent need to protect those who are exposed to extreme suffering resulting from lack of sufficient protection, and should consider the options

for making use of the study within the United Nations system. There is need for a broad and thorough discussion of the issue. The report should fully reflect the discussion on how respect for human rights can be ensured in all circumstances.

H. Jordan

[Original: Arabic]
[25 September 1997]

Minimum humanitarian standards at the national (Jordanian) level

76. Jordan has always been in the forefront of the countries, and particularly the developing countries, that show adequate concern for human rights and fundamental freedoms. It has ratified most (10 out of 13) of the international and regional human rights conventions and has amended much of its national legislation in a manner consistent with the directives of the United Nations. In fact, it has put those principles into practical effect by showing due regard for minimum humanitarian standards.

77. We will briefly review the situation in this field at the internal (Jordanian) level in order to link it to the situation at the international level so that we can determine whether the situation in Jordan is consistent or in conformity with the international position. The extent to which minimum humanitarian standards are observed in Jordan is examined below.

A. Minimum humanitarian standards at the investigation stage

78. One of the most important principles that the Jordanian legislature has emphasized at the investigation stage is the assumption that the accused is innocent until proved guilty at a lawful trial (presumption of innocence). Jordanian law also recognizes other human rights at the preliminary investigation stage. These include:

(a) The right to seek the assistance of a lawyer: This right, which is referred to in article 63, paragraph 1, of the Code of Criminal Procedure, means that the accused does not have to answer the charge unless his lawyer is present.

(b) The right of the accused to be informed of the charge brought against him (article 63, paragraph 3).

(c) The provision of adequate safeguards, in keeping with minimum humanitarian standards, during arrests and searches through supervision by the Department of Public Prosecutions, from which permission must be sought before any search is conducted. Moreover, no one can be arrested or imprisoned except in accordance with the provisions of the law and by order of the competent authorities (article 103 of the Code of Criminal Procedure).

(d) The police and security authorities are empowered to hold suspects for questioning only for 24 hours and any official who violates this provision is liable to the penalty for the offence of unlawful detention (article 113 of the Code of Criminal Procedure).

79. These are the principal safeguards that Jordanian legislation currently provides at the stage in which an accused person is questioned. In actual practice, the Department of Public Prosecutions, being one of the pillars of the regular judiciary which believes that defendants should be tried before their natural judge, fully supervises the investigation procedures, even in their initial stages when the investigation is undertaken by the police and security authorities. The latter are responsible for informing the Department of Public Prosecutions immediately of any charge brought against any person, who is then questioned by the public prosecutor in private, only the person's lawyer being permitted to attend.

B. Minimum humanitarian standards at the trial stage

80. Jordan has a fully independent judiciary, which ensures that judges are impartial in their judgements and in their application of the law (article 97 of the Constitution). This independence also has a positive impact on the personal freedoms and rights of individuals. Our courts guarantee minimum humanitarian standards for persons on trial. The most important rules and principles that ensure the application of those standards in Jordan can be summarized as follows:

(a) Trials are held in public, as a result of which the performance of the courts can be monitored by anyone (article 101 of the Constitution).

(b) All citizens are equal, without discrimination among them in regard to their rights and obligations, notwithstanding any differences in race, language or religion (article 6 of the Constitution).

(c) The courts are protected from interference in their affairs.

(d) The courts diligently safeguard the right of the accused to a defence.

(e) No one is put on trial except in accordance with the provisions of the law.

(f) Our legislature has provided special safeguards for certain categories of persons, such as juveniles, in the event of their being put on trial, in order to uphold and protect their rights through courts governed by special legislation and courts specialized in the trial of juveniles. The same applies to women. The measures taken by the legislature in this regard are in keeping with the international tendency to show special regard for the rights of children, juveniles and women when administering justice.

C. Minimum humanitarian standards at the stage of enforcement of penalties

81. Increasing international and local concern is being shown for human rights at all stages of criminal proceedings and calls have been made for this stage to become an integral part of the criminal proceedings. All the international and regional instruments refer to the need to review prison laws and regulations in order to make their provisions consistent with those of the Constitution, other legislation and the Standard Minimum Rules for the Treatment of Prisoners. In keeping with this trend, the Jordanian legislature

has made provision for safeguards for convicted persons during the stage of enforcement of their penalties in accordance with the Prisons Act No. 23 of 1953 and the Prisons Statute No. 1 of 1955. The principal safeguards that ensure the application of minimum humanitarian standards to convicted persons at the stage of enforcement of their penalties are as follows:

(a) The Prime Minister, the Ministers of the Interior and Justice and the head of the Department of Public Prosecutions have the right to visit and search prisons at any time in order to verify their compliance with the regulations governing conditions of detention. They also examine the prison food from the standpoint of quality and quantity and ensure that the general and internal prison regulations are being observed (article 5 of the Prisons Act).

(b) Government doctors are assigned by the Minister of Health to visit the prison every day in order to provide health care for its inmates. Every prisoner is also examined at the time of his admission to the prison (article 7 of the Prisons Act).

(c) Special places are allocated to women in the prisons and male prison warders are prohibited from entering such places that are restricted to female detainees (article 13 of the Prisons Act).

(d) Different categories of prisoners are segregated. For example, special places are allocated to prisoners awaiting trial, convicted prisoners, juveniles and women (article 20).

(e) Sick prisoners are transferred to hospitals.

(f) In order to encourage prisoners to improve their conduct, develop in them a spirit of industriousness and ensure that their treatment is sufficiently lenient to be conducive to their reform, all the prisons make the arrangements needed to enable every prisoner serving a sentence of one month or more to merit release when no more than one quarter of his full sentence remains to be served.

(g) Prisoners are permitted to visit and communicate with the outside world and ministers of religion are allowed to enter the prison in order to visit prisoners seeking their services.

82. The Prisons Statute No. 1 of 1955 covers all the requirements needed to ensure observance of the minimum humanitarian standards. The internal regulations of Jordanian prisons have also recently been amended, since the prisons have been converted into reform and vocational rehabilitation centres. The prison administrations now permit prisoners to engage in occupational and craft activities in such a way as to achieve a degree of proficiency in those occupations and crafts that will be of benefit to them in their working lives following their release from prison. That experiment has proved highly successful, since it has helped to rehabilitate large numbers of prisoners.

83. In short, we can see from the above that the Jordanian legislature respects and guarantees all the rights and freedoms of persons in such a way as to promote the application of the minimum humanitarian standards at the

stages of investigation, trial and enforcement of penalties, in addition to showing due regard for minimum humanitarian standards in general. This trend is consistent with the measures taken by the international community in this regard. Before concluding our discussion on the status of minimum humanitarian standards in Jordan, since paragraph 3 of Commission on Human Rights resolution 1995/29, to which reference is made in the Finland Declaration, invites all States to consider reviewing their national legislation in such a way as to safeguard human rights in situations of public emergency, in this connection it should be noted that a Royal Decree was promulgated on 30 March 1992 endorsing the Council of Ministers' decision to lift martial law. Accordingly, the instructions issued by the martial law administration, as well as any amendments thereto, have automatically become null and void.

84. This paper is also being prepared in response to paragraph 4 of the above-mentioned resolution of the Commission on Human Rights which calls upon Governments and intergovernmental and non-governmental organizations to prepare reports on this matter.

Comments, views and proposals concerning the question of minimum humanitarian standards

85. Having reviewed the situation at the international level, as well as the corresponding situation at the national and internal level in Jordan, and having ascertained that the trend in Jordanian legislation is more or less consistent with the international trend in this field since Jordanian law guarantees the application of all humanitarian standards at their minimum levels, we will make the following comments and proposals:

(a) Since article 3 of Commission on Human Rights resolution 1995/29 invites all States to consider reviewing their national legislation with a view to ensuring the application of human rights and minimum humanitarian standards, particularly in situations of public emergency, on 30 March 1992 the Jordanian Council of Ministers decided to lift martial law and revoke the instructions issued by the martial law administration. That decision was endorsed by a Royal Decree. The cases that were being heard by martial law courts have been transferred to the State security courts the judgements of which, in accordance with their Statute, are subject to cassation, whereas the judgements of the martial law courts were final. This development has had a favourable impact on the rights and freedoms of individuals. We also find that this development is in full conformity with the text of paragraph 3 of resolution 1995/29.

(b) This paper is being prepared in conformity with the text of paragraph 4 of resolution 1995/29, which calls upon Governments to submit reports on this matter. Since the same paragraph urges non-governmental organizations to submit reports on the same matter to international and regional organizations, the Arab Organization for Human Rights (AOHR) prepared a report on this matter, which it submitted to the United Nations at Cairo. The report of the Jordanian branch of AOHR on human rights during the state of emergency in Jordan was published as part of the AOHR report for 1993 on page 49 of which we find the following statement: "The year 1992 witnessed a major legal development concerning human rights in Jordan, namely the

promulgation of a Royal Decree on 1 April, finally approving the Council of Ministers decision to lift martial law which had been applied continuously since June 1967". This development was also mentioned in reports published by Amnesty International.

(c) Since Commission on Human Rights resolution 1995/29 was adopted in the light of the Finland Declaration of 1990, we find that Jordanian law shows due regard for minimum humanitarian standards at the stages of investigation and enforcement of penalties in the manner specified in articles 3, 4 and 5 of that Declaration.

(d) We find that the Declaration fails to make provision for legal sanctions against any State that commits acts of torture and cruel, inhuman or degrading treatment against its citizens, particularly at the stage of enforcement of penalties. In fact, the provisions contained in that Declaration are general and abstract and make no mention of any sanctions against the States that commit those acts, even though those acts are widespread in many countries of the world.

(e) We find that the Declaration makes no provision for support and encouragement for States, such as Jordan, which are undertaking rehabilitation programmes for prisoners, bearing in mind the fact that those programmes are a heavy burden on the budget of the State, particularly if it has only modest economic resources. Those States should receive support and encouragement as an incentive to continue those programmes, which ensure more effective implementation of minimum humanitarian standards at the stage of enforcement of penalties.

(f) We find that the Declaration makes no references to cases of administrative detention, solitary confinement, preventive detention and detention for long periods of time without trial and at little-known locations. This phenomenon is widespread in many parts of the countries of the third world and Latin America and the failure to refer to such cases will prompt those countries to perpetuate the phenomenon of the violation of human rights.

(g) The Declaration does not deal adequately with the question of the taking of hostages, to which reference is made in article 3, paragraph 2, even though this phenomenon constitutes a serious violation of human liberty, the majority of its victims being innocent persons.

86. In conclusion, in spite of these modest comments, we find that the Declaration of Minimum Humanitarian Standards, which was adopted in Finland on 2 December 1990 and transmitted to the Commission on Human Rights as indicated in resolution 1995/29, and which was to be submitted to the General Assembly with a view to its adoption with due regard for the comments and reservations expressed by some States in regard to some of its provisions, will, on the whole and in the event of its final adoption, constitute a further token of the international community's concern for human rights.

I. Norway

[Original: English]
[18 September 1997]

87. The Norwegian Government welcomes Commission on Human Rights resolution 1997/21, entitled "Minimum Humanitarian Standards", in which the Secretary-General is, inter alia, requested to submit an analytical report on the issue of fundamental standards of humanity to the Commission at its fifty-fourth session.

88. According to paragraph 4 of this resolution, the study should in particular take into consideration the issues raised in the report of the International Workshop on Minimum Humanitarian Standards held in Cape Town, South Africa, from 27 to 29 September 1996. In the report from the Workshop, which is contained in document E/CN.4/1997/77/Add.1, it is recommended that the analytical study should be guided by the urgent need to protect those who are exposed to extreme suffering resulting from lack of sufficient protection.

89. Minimum humanitarian standards refer to a core of humanitarian law and human rights which should be respected in all situations and at all times. They should constitute a safety net independent of any assertions that a particular conflict is below the threshold of applicability of international humanitarian law treaties.

90. It has, however, been repeatedly stated in many international forums that the most serious violations of human rights tend to occur during internal conflicts and strife. Over the last decades the world has seen a dramatic increase of conflicts within States rather than between States.

91. Many of these situations of internal strife and violence cause tremendous suffering that have placed great strains on the international community. It is also broadly recognized that these situations represent the most difficult context for the protection of human rights.

92. It is the view of the Norwegian Government that the analytical study requested in resolution 1997/21, should, inter alia, consider whether experience has exposed lacunae and deficiencies in the international regimes of protection of human rights, in particular during situations where the violence and strife have not reached the threshold of applicability required by international humanitarian law treaties; but where the violence at the same time has led to public emergencies where the government has resorted to derogations from certain obligations under human rights law.

93. The study should also analyse to what extent the situation is affected when the State in question is not a party to the relevant treaty. Phenomena that tend to occur in tense situations are, inter alia, suspension of judicial guarantees, bad treatment when arrested and in detention, restrictions on rights and freedoms, excessive use of violence by law enforcement officials, impunity for violations and activities by non-government actors that can negatively affect the enjoyment of human rights. There is a need to address the question of why these phenomena occur and to propose recommendations on what is needed to avoid these phenomena as far as possible.

94. As mentioned above, another area for useful application of minimum humanitarian standards, concerns human rights during emergencies and the issue of derogations. If a situation involves internal violence where humanitarian law does not apply, States may, under certain stringent limitations, be entitled to proclaim a public emergency and derogate from certain human rights.

95. Norway stresses the importance of avoiding erosion of human rights by derogation. The necessity of strict observance of the conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, must be underlined. The Covenant as well as, inter alia, the European Convention on Human Rights provide that no derogation may be made from a number of articles, thus making certain rights inalienable at all times and under all circumstances.

96. The non-derogability of the exercise of certain rights, set forth in article 4, paragraph 2 of the International Covenant on Civil and Political Rights, has been enhanced or expanded as a result of the entry into force of the Convention on the Rights of the Child, which makes no reference to the right of derogation.

97. The question of derogation might also arise in situations where the relevant treaty does not expressly allow derogation. During an emergency, situations can arise in which it is impossible to protect certain rights. The limited possibility for invoking the doctrine of "impossibility", as regulated in article 61 of the Vienna Convention on the Law of Treaties, should be stressed in this respect.

98. Reference should also be made to the Committee on the Rights of the Child, which in a general discussion at its second session stated the following: "It was pointed out that there were some situations in which children did not benefit from the protection of existing standards, as was very often the case in internal strife. There was therefore a need to consider a set of minimum humanitarian standards to be applicable in all situations to all children ..." (CRC/C/10, para. 66, 19 October 1992).

99. The Norwegian Government emphasizes the need for clear rules and principles applicable in all situations and which must be respected by all parties to conflicts. In identifying such rules and principles one should, in addition to existing instruments, also include and consolidate the case law of the various treaty bodies.

100. Norway is looking forward to a broad and thorough discussion of the analytical report, where the focus should be on how we can ensure respect for human rights in all circumstances.

J. Philippines

[Original: English]
[30 September 1997]

101. The Philippines believes that the alarming rise of internal conflicts that cause intensive sufferings and breaches of the principle of humanity necessitates a conscious and continuing study of this principle and the

governance of the behaviour of all persons, groups and public authorities. The proper identification and implementation of minimum humanitarian standards are of primordial importance in preventing violations and abuses.

102. The International Workshop on Minimum Humanitarian Standards held in Cape Town, South Africa (27-29 September 1996) is a major effort to achieve international consensus on this issue. The Philippine Government concurs with the workshop group that attention and assistance be focused on the victims of violence arising from internal armed conflict and ethnic cleansing, especially women and children.

103. In identifying common rules of human rights law and international humanitarian law that are applicable in all circumstances, the following should be considered:

(a) All members of the population are made aware of the full scope and coverage of their human rights in situations of armed conflict and public emergencies. It cannot be assumed or taken for granted that every person is equally knowledgeable of their rights.

(b) Appropriate mechanisms must be set up to ensure that adequate care and attention is provided promptly, and in a timely manner, to all members of the affected population, particularly those deemed to be most vulnerable to situations of public emergencies, i.e. women, children and youth, the elderly, disabled, etc.

(c) Dedicated efforts should be made to monitor all conflict situations in order to assess the need for preventive and therapeutic interventions as accurately as possible. Ideally, responding agencies must be equipped to deal with specific needs of victims of war and other forms of violence, if those victims are to be rehabilitated successfully.

K. Switzerland

[Original: French]
[29 October 1997]

104. In its comments submitted in accordance with Commission on Human Rights resolution 1996/26 (E/CN.4/1997/77/Add.1 of 28 January 1997), Switzerland emphasized the importance it attaches to "minimum humanitarian standards", which it suggested calling "minimum standards of humanity". The term "standards" is preferable to "rules" or "norms", which refer to legal obligations. Furthermore, the term "of humanity" is preferable to "humanitarian" because it covers both humanitarian and human rights standards. It should be noted here that the Commission on Human Rights reused the term "minimum humanitarian standards" in the English version of its resolution 1997/21 of 11 April 1997.

105. In its comments on resolution 1996/26, Switzerland also submitted its domestic legislation applicable during states of emergency.

106. In accordance with paragraphs 5 and 6 of resolution 1997/21, which was adopted by the United Nations Commission on Human Rights on 11 April 1997 and

of which Switzerland was a sponsor, Switzerland hereby submits its comments on the issues raised in the report of the International Workshop on Minimum Humanitarian Standards which was held at Cape Town, South Africa, from 27 to 29 September 1996 (E/CN.4/1997/77/Add.1 of 28 January 1997) and in which Switzerland participated.

107. Issue 1: What are the characteristics of the situations, i.e. contemporary conflicts, to be discussed?

108. Switzerland fully endorses the conclusions adopted on this issue at the Cape Town Workshop: the minimum standards of humanity must be applicable in all situations.

109. Despite a well-developed international system of regulations in the area of human rights and humanitarian law, the most basic rights of the human person continue to be the subject of very serious violations in practice. Furthermore, the applicable international rules are sometimes challenged. International protection of the individual is particularly inadequate in certain situations which lie midway between peace and armed conflict. Such is the case during periods of unrest, crisis and internal tension, including in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed (article 4 of the International Covenant on Civil and Political Rights) and even in cases of non-organized, latent or low-intensity conflict. The development of minimum standards of humanity should meet the need for adequate protection of the individual in such situations. Therefore, no attempt should be made to define the situations in which minimum standards of humanity are applicable since any attempt at a definition would inevitably involve limiting the scope of application of these standards and would therefore run counter to their purpose. Minimum standards of humanity should apply in all situations.

110. Issue 2: Who are the actors (Governments, non-governmental armed groups, United Nations machinery, including United Nations-appointed experts, the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and other international humanitarian organizations, parties to the Geneva Conventions, the Red Cross conferences, neighbouring countries, regional organizations, ad hoc tribunals, etc.)?

111. Switzerland considers that minimum standards of humanity should apply to all the actors concerned, i.e. to all State, inter-State and non-State groups, and also to individuals.

112. Issue 3: Are there lacunae or deficiencies in the legal regimes of protection?

113. Switzerland believes that the usefulness of developing minimum standards of humanity does not depend on the existence of lacunae or deficiencies in the existing legal regimes. Minimum standards of humanity should not be considered as norms of international law. Therefore, their purpose is not to fill any lacunae in those norms, but to remedy inadequacies in the effective

protection of the individual (see replies to issues 1, 5 and 6). We must absolutely avoid speaking of lacunae or deficiencies in existing legal regimes.

114. There are various situations in which the protection afforded to the individual may be insufficient. Chief among these are the following:

(a) A State is not a party to certain treaties in the area of human rights and humanitarian law. In such cases, however, the rules contained in these instruments which arise under customary law remain applicable.

(b) A State exercises the option of derogating from certain guarantees established by human rights treaties even though the internal unrest which it is experiencing has not reached the degree of gravity that would permit the application of article 3 common to the Geneva Conventions. The only rights applicable in such cases are absolute rights, i.e. rights deriving from treaties or customary law which are not subject to any derogation or restriction.

(c) A State exercises the option of derogating from certain guarantees established by human rights treaties and wrongly challenges the applicability of article 3 common to the Geneva Conventions.

(d) During a situation of internal unrest, one party to the conflict claims not to be bound by the obligations contracted by the State against which it is fighting.

(e) As a result of a political or other crisis, the pre-existing State structures have disintegrated or collapsed. In the absence of a genuine chain of command, the resulting factions lack effective control of their troops.

115. Issue 4: Is there a need for a common reference base and yardstick, applicable in all situations, against which situations should be assessed?

116. If we do not define the situations in which the standards are applicable, this question becomes irrelevant.

117. Issue 5: What would be the implications of a new basic document setting out or reaffirming or developing standards/safeguards/codes of conduct for the actors, considering that some of these standards/safeguards/codes of conduct would already be customary international law?

118. Switzerland considers that this issue raises the following questions, which have thus far received little attention in the discussion of minimum standards of humanity: in what form should possible minimum standards of humanity be adopted?

119. Viewing the standards as rules of law would entail major risks to the existing legal system and its future developments, and those risks must be avoided (see reply to issue 6). As stated above, the minimum standards of humanity should apply to all situations and actors. Therefore, they should not be limited, like existing international norms, by rules defining their scope of application. Under these circumstances, Switzerland believes that

minimum standards of humanity cannot be adopted in the form of binding provisions of international law. The obligation to respect them is more of a political nature ("political commitments").

120. How can respect for minimum standards of humanity be ensured? Since the standards are not legal norms, emphasis must be placed first on their dissemination. It is important to ensure, at the time of their drafting, that they are written in simple, easily-understood language. They should be disseminated by specific means adapted to the various target groups (State and non-State entities, military and civilian populations, etc). Non-governmental organizations, will have a particular role to play, together with official bodies, in their dissemination.

121. Issue 6: How can the risk of setting standards that fall short of existing obligations be avoided, thus ensuring the consistency of new standards with existing ones?

122. Although there is a dense network of international treaties, protection of the individual is not adequately ensured in practice. Switzerland believes that this is primarily because existing instruments are not sufficiently well known, respected or applied. It is essential to ensure that the development of minimum standards of humanity does not seriously affect the rules of international law.

123. Switzerland considers that the following points deserve particular attention:

> A Declaration, as the framework within which the standards would be formulated, should state explicitly that it in no way limits the existing rules of law. Furthermore, references to existing law and mention of legal lacunae should be avoided as far as possible. International efforts to disseminate and implement existing international norms (particularly human rights and international humanitarian law) should be continued independently of the development and dissemination of the minimum standards of humanity.

124. Switzerland reaffirms its hope that it will be possible to discuss the analytical report by the Secretary-General on the question of minimum standards of humanity in an open-ended seminar under the auspices of the Commission on Human Rights.

L. Turkey

[Original: English]
[3 October 1997]

125. The "minimum humanitarian standards" is a theoretical exercise carried out in the United Nations for the last couple of years with the purpose to protect the human being, his life, dignity and physical integrity in situations of violence which do not reach the threshold of an "armed conflict".

126. The situations of violence which are less than an armed conflict are not covered by the International Humanitarian Law. Article 1 (2) of Additional Protocol II to the Geneva Conventions of 12 August 1949 define such situations within the confines of its approach to internal armed conflicts. The very article states that internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature are not armed conflicts and therefore they are outside the scope of the common article 3 of the Geneva Conventions as well as Additional Protocol II.

127. However, the situations of violence which are below the threshold of an armed conflict are not limited with the domestic field. In today's world, where the traditional legal concept of war has been taken over by new and more discreet methods of conflict, such situations are also visible at the international scene. International terrorism is one of the contemporary forms of violence which is not considered as an international armed conflict and which, therefore remains outside the scope of the International Humanitarian Law. In fact, there is no provision in this law prohibiting international terrorism and regulating the combat against it. Article 33 of the Fourth Geneva Convention and Article 13 (2) of Additional Protocol II cannot be construed as prohibition of international terrorism in the contemporary sense.

128. In the Turkish Government's view, the concept of "minimum humanitarian standards" is not a part of the law of war but that of peace. In other words, this concept should be worked on in the domain of the international human rights law. Despite its title, this concept pertains more to the international human rights law than the international humanitarian law.

129. As stated in resolution 1997/21 the minimum humanitarian standards are the fundamental principles of humanity which should govern the behavior of all persons, groups and public authorities. These principles must be applicable in all situations, including armed conflict and to everybody involved. Yet, since the intention is to cover the grey area created by the new forms of violence which do not reach the threshold of an armed conflict, it would be logical to take them up within the limits of the international human rights law: in conjunction with the state of emergency as for internal disturbances and in relation to the human rights violation dimension of international violence as for international terrorism.

130. As to the latter, ever since the Vienna Conference on Human Rights significant steps have been taken in the United Nations in recognition of the fact that terrorism, in its all forms and manifestations, is a gross violation of human rights. A kind of "soft law" has been developed which prohibits terrorism and obligates all States to take necessary and effective measures, in conformity with relevant provisions of international law, including human rights standards, to prevent, combat and eliminate terrorism. The very soft law highlights the responsibility of the terrorist without making it a subject of international law.

131. The Turkish Government views it difficult to develop a hard law on minimum humanitarian standards. Moreover, hard law is not a viable option since it will limit the possibility of application of these standards only

with State parties. On the other hand non-governmental actors, including armed groups targeting at the lives of innocent civilians will continue to elude responsibility.

132. With this consideration, the Turkish Government believes the only viable way to progress on the concept of minimum humanitarian standards will be an approach from the perspective of the "Martens Clause". The "Martens Clause" stipulates that in cases not covered by the rules of law, people in conflict remain under the protection and the rule of the principles of the law of nations, as they result from the usages established by civilized peoples, from the laws of humanity and the dictates of public conscience.

VIEWS AND INFORMATION RECEIVED FROM UNITED NATIONS AGENCIES

A. Food and Agriculture Organization (FAO)

[Original: English]
[17 September 1997]

133. The Food and Agriculture Organization of the United Nations (FAO) notes with interest that in the Turku Declaration, as contained in document E/CN.4/1995/116, there is the following provision:

> "The following acts are and shall remain prohibited:
>
> ... (f) deliberate deprivation of access to necessary food ...".

134. FAO believes, indeed, that under both human rights and humanitarian law, the deliberate deprivation of access to food is prohibited and should remain so. It would support efforts towards strengthening that notion.

135. FAO notes that the intention of the work in process regarding 'minimum humanitarian standards', is to strengthen the protection of human beings in all situations and all circumstances, which is especially relevant in situations of internal strife or disturbances, which do not reach the level envisaged in common article 3 of the 1949 Geneva Conventions or of Protocol II thereto, but could also be useful in peaceful situations where there is nevertheless a danger of serious human rights violations, including the deliberate deprivation of food. Furthermore, the Organization notes that such standards would be applicable to all actors, and not solely to States, as is the case with human rights law.

136. FAO welcomes the efforts of the international community to bring together human rights and humanitarian law and to solve the inherent problems. It awaits eagerly the analytical report of the Secretary-General and will continue to follow with interest developments touching on the protection of the right to food. Although it believes that this is not the time to submit specific drafting proposals, the Organization would like to draw attention to the need for a common understanding of the meaning of "necessary food", which it maintains should be taken to mean food necessary for an active and healthy life.

B. United Nations High Commissioner for Refugees (UNHCR)

[Original: English]
[17 November 1997]

137. The United Nations High Commissioner for Refugees supports the development of a Declaration of Minimum Humanitarian Standards (E/CN.4/1996/80), and believes that conferences and workshops dedicated to this end are both useful and essential if further progress on this issue is to be achieved. UNHCR considers that a Declaration of this character could provide an improved legal framework to enhance the protection of both internally displaced persons and refugees. The application of the Declaration to all possible situations of violence, including internal disturbances, public emergencies and ethnic conflict, ensures that the protection gaps in existing international humanitarian law are filled. In addition, the fact that the standards contained in such a Declaration are intended to be non-derogable and must be respected by all persons, groups and authorities, irrespective of their legal status, helps ensure compliance by non-State actors and thus greater protection for individuals.

138. Although UNHCR endorses in principle the formulation of a Declaration of Minimum Humanitarian Standards, it also has some concerns. In our opinion, it is very important that a new set of norms complement and reinforce existing international law, whether this be humanitarian, human rights or refugee law. It would not be in the interests of refugees or internally displaced persons' protection to develop legal principles which detract from established customary and treaty law. UNHCR thus supports the recommendation of the Cape Town Workshop that the Secretary-General of the United Nations and the International Committee of the Red Cross undertake an analytical study of the topic so as to best address these questions. UNHCR would also like to participate in any further discussions on this matter.

139. UNHCR's mandate is to provide international protection for refugees. Therefore, we believe very strongly that a Declaration of Minimum Humanitarian Standards must uphold not only the right of persons to remain and not be subject to forcible displacement, but also the right of persons to seek and enjoy asylum, as stipulated in article 14 of the Universal Declaration of Human Rights. It is important that such a Declaration of Minimum Humanitarian Standards not be couched in language that could lead to the containment of asylum seekers or to the erosion of existing standards providing for the protection of refugees. The option of seeking asylum in other countries as well as the principle of non-refoulement must be guaranteed. In addition, the right to be able to return to one's country of origin should be explicitly confirmed.

140. Finally, it is our view that a Declaration of Minimum Humanitarian Standards would not be complete without a clause being specifically dedicated to the protection of internally displaced persons who are often the most helpless victims of internal strife.

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